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DET107259

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jerome Easterly #366413

Petitioner;

v.

Tony Trierweiler
Respondent.

Case:2:17-cv-13064
C Judge: Murphy, Stephen J.
MJ: Majzoub, Mona K.
Dist Filed: 09-14-2017 At 04:02 PM
HC EASTERLY VS TRIERWEILER (RB)
Magistrate Judge

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jerome Easterly, IN-PRO-SE; respectfully states:

1. Petitioner Jerome Easterly is a citizen of the United States, is a resident of Wayne County, Michigan and is currently imprisoned in Ionia, Michigan.

2. Petitioner Jerome Easterly is currently unconstitutionally detained and imprisoned by the Respondent Tony Trierweiler, Warden, at Bellamy Creek Correctional Facility, where Jerome Easterly is serving terms imposed by Judge Richard M. Skutt of the Wayne County Circuit Court, after a plea was entered by the Petitioner, the Honorable Richard M. Skutt presiding over case 2015-0090638-01-FC.

3. Petitioner has exhausted all state remedies available to him with regards him being convicted by plea in case 2015-009-638-01-FC.

a. Petitioner Jerome Easterly raised the following issues in the Michigan Court Of Appeals, the point headings of the issues:

I. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO WITHDRAW APPELLANT'S MOTION TO WITHDRAW NO CONTEST PLEA...

b. The Michigan Court Of Appeals denied the Petitioner's application for leave to appeal in an unpublished opinion Court Of Appeals number 334403.

c. The Petitioner then filed a timely application for leave to appeal in the Michigan Supreme Court. On April 4, 2017; the Michigan Supreme Court denied the Petitioner's application for leave to appeal in an unpublished opinion in Supreme Court case number 154637 &(7).

4. As set forth in the accompanying memorandum of law, Jerome Easterly is being detained in violation of the 5th, 6th, and 14th Amendments to the United States Constitution.

5. Petitioner Jerome Easterly has not filed any previous petition for writ of habeas corpus in this, or any other Federal District Court.

CONCLUSION-RELIEF REQUESTED

The conclusion-relief requested the Petitioner Jerome Easterly wanted to remind this Honorable Court of what the United States Supreme Court said in *Haines v Kerner* 404 US 519 (1972):

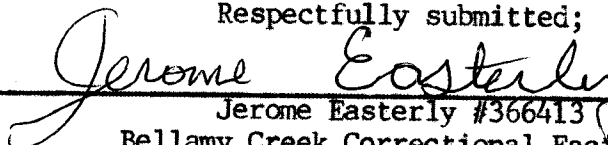
"PRO-SE Litigant's pleadings are to be construed liberally and held to less stringent standards than formal pleadings to state a claim drafted by a lawyer, if the Court can reasonably read pleadings to state valid claim in which litigant could prevail it should do so, despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements".

For these reasons, Petitioner Jerome Easterly asks:

- a. That Respondent be required to appear and answer the allegations of this of this petition,
- b. That after full consideration, this Honorable Court grant this petition and order Jerome Easterly either allowed to withdraw his plea, or released from custody;
- c. That this Honorable Court grant what it may deem just, and proper under the circumstances; and
- c. That this Honorable Court grant oral arguments in this matter.

Respectfully submitted;

By:



Jerome Easterly #366413
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jerome Easterly #366413

Petitioner;

Civil Action NO: _____

v.

District Court Judge: _____

Tony Trieweiler

Magistrate Judge: _____

Respondent.

MEMORANDUM OF LAW TO PETITION FOR WRIT OF HABEAS CORPUS

Jerome Easterly#366413
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia,Michigan 48846

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STATEMENT OF QUESTIONS INVOLVED

I. Did the trial error by denying Petitioner's Motion to withdraw NO Contest
Please ?

The Petitioner says: "YES".

The Appelle said: "NO".

The Trial Court said: "NO".

The Michigan Court Of Appeals said: "NO".

STATEMENT OF FACTS

The Petitioner was charged with three counts of AWIM, Contrary to MCL 750.83, Felon in possession of a firearm, contrary to MCL 750.82, Felony-Firearm (Second offense notice), 750.227b(b) and habitual fourth offender, mandatory 25-year sentence, contrary to MCL 769.12(6)(a).

The facts and circumstances giving rise to these charges took place on December 24, 2014. Detroit Police responded to a location in Detroit to assist with accident utility pole down. When Officers arrived, they saw a black vehicle stopped in the middle of the street with a male driver. Officers also observed a gold colored GMC Envoy with extensive driver side front end damage and numerous bullet holes on the driver's side. Ms. Dache Quinn, was the medic unit and told Officers that she was driving North on Lasher, when Mr. Easterly allegedly went left of center into the Southbound lane of Lasher and started firing shots from his vehicle. Mr. Easterly then left the location.

Apparently, Mr. Easterly then drove over to his mother's home and shot her about five times; twice in the legs, twice in the buttocks and once in the stomach. The petitioner then left the scene. A few months later, Petitioner was apprehended in the State of Ohio.

On February 8, 2016, (Which was the day set for the start of the Jury trial), Pursuant to a plea and sentence agreement, Mr. Easterly pled no contest to one of AWIM and Felony-Firearm, second offense. The sentence agreement was a term of 18-30 years for the AWIM, plus 5 years consecutive for the Felony-Firearm. In exchange, the People agreed to dismiss the mandatory 25-year minimum sentence (Habitual fourth) as well as the other charges. The factual basis for the plea came from the police report, which indicated Mr. Easterly fired several shots from his vehicle at his mother. He had also been previously convicted of a felony firearm, which made this felony-firearm a second conviction. (Refer to plea Transcripts Page 1-18).

On March 1, 2016; Petitioner appeared for sentencing. Prior to sentencing, Defense Counsel advised the trial court that Petitioner wanted to withdraw his plea. The Trial Court denied the request and proceeded to sentence Mr. Easterly per the Plea and Sentence agreement to a term of 18-30 Years for the AWIM, plus 5 years Consecutive for the Felony-firearms (Second offense). (Refer to sentencing Transcripts Pages 1-17).

THE TRIAL COURT ERRED BY DENYING PETITIONER'S MOTION TO WITHDRAW NO CONTEST PLEA

Standard Of Review

This Honorable Court reviews whether the Trial Court erred by denying Petitioner's motion to withdraw no contest plea de novo *McCarthy v United States* 394 US 459, 89 SCT 1166; 22 LED2d 418 (1968), *Hill v Lockhart* 894 F2d 1009 (CA8 1990), cert den 497 US 1011 (1990), *In Re Guilty Plea Cases* 395 Mich 96 (1975), cert den 429 US 1109 (1977).

The Michigan Appellate Court reviews whether the trial court erred by denying Petitioner's motion to withdraw his no contest plea de novo *In Re Guilty Plea Cases* 395 Mich 96 (1975), cert den 429 US 1109 (1977), *People v Hawkins* 468 Mich 488, at 500 (2003), MCR 6.302(B)(E), and MCR 6.310.

Discussion:

MCR 6.302 Pleas of Guilty and Contendere

(A). Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must personally carry out subrules (B)-(E).

The authority for allowing Petitioner to withdraw his plea when the request is made before sentencing is found in MCR 6.310(B)(1), which states in pertinent part that "a plea may be withdrawn on defendant's motion or with the defendant's consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea".

There is no absolute right to withdraw a guilty plea once the trial court has accepted it. *People v Davidovich* 238 Mich App 422, at 425 (1999), *People v Kennebrew* 220 Mich App 601, at 605 (1996). However, the rules set in MCR 6.310, or any other claim that the plea was not an understanding, voluntary, or accurate one, the defendant must demonstrate some error in the plea proceeding. *People v Hawkins* 468 Mich 488, at 500 (2003).

The question for this Honorable Court is whether it is in the interest of justice to allow Petitioner to withdraw his plea. Kennebrew supra. This is not a matter where the Petitioner has simply had a change of heart, but where the Petitioner asserts he was ill advised during the proceedings and unaware of all of the consequences. The Petitioner maintains his innocence. There were, and still are issues with the Petitioner's mental health at the time of the offense, and at the time of the plea. Refer to page 12 of his presentence report, which documents all of his mental issues. Trial counsel did not explore any of these issues with the trial court properly, nor did he have Petitioner examined for competency to stand trial and criminal responsibility.

The United States Supreme Court said in United States v Wade 388 US 218, at 219-222, 87 SCT 1926, 18 LED2d 1149 (1967):

"The manifest purpose of the examination in this case, and the proper objective of a mental examination in any criminal case where a defendant's sanity is in issue should be, to obtain knowledge not about fact concerning defendant's participation in the criminal acts charged, but about facts concerning a defendant which are themselves material to the case. The purpose is not prove by evidence wrested from a defendant whether he is guilty as charged. But, rather, to prove whether a defendant possess the requisite mentality to be guilty as charged, assuming that his guilt is other wise established, or whether, legally, he can not be held criminally responsible, irrespective of what other proof may establish he has done".

In order for a plea to be accepted, a plea of guilty in a criminal case must be entirely voluntary, by one competent to know the consequences, and should not be induced by fear, misapprehension, persuasion, promise, inadvertence, or ignorance. An involuntary guilty plea violates due process of law. McCarthy v United States 394 US 459, 89 SCT 166; 22 LED2d 418 (1968).

In this case, Petitioner's plea was involuntary in light of his mental health conditions of suffering from schizophrenia, bipolar disorder, clinical depression, and he also suffers from suicidal tendencies. These conditions existed during the time of the offenses, and at the time of the plea. There is no prejudice to the prosecution if the plea is set aside. Everyone is available to testify.

Wherefore;the Petitioner Jerome Easterly respectfully ask that this Honorable Court grant him relief as stated in his Petition For Writ Of Habeas Corpus.

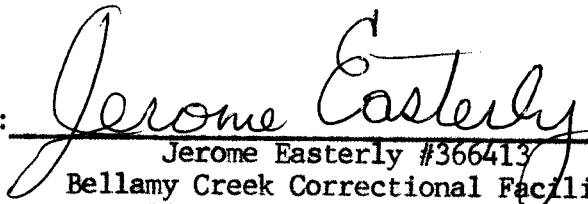
Respectfully submitted;

By: Jerome Easterly
Jerome Easterly #366413
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, michigan 48846

verification

I declare under the penalty of perjury in accordance to 28 USC 1746. That the forgoing is true and correct and this petition for writ of habeas corpus was placed in the Prison Mailing system on September 8, 2017. Executed by Jerome Easterly in Ionia, Michigan.

Sign: _____


Jerome Easterly #366413
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846

Jerry Easterly #366413
Sollaway Creek Correctional Facility
1727 West Silverwater Highway
Tombig, Michigan 48846

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TO: Clerk of the Court
United States District Court
231 West Lafayette Blvd
Detroit, Michigan
48226

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CTM 10/10/17

CIVIL COVER SHEET FOR PRISONER CASES

Case No. <u>17-13064</u>		Judge: <u>Stephen J. Murphy, III</u>		Magistrate Judge: <u>Mona K. Majzoub</u>	
Name of 1st Listed Plaintiff/Petitioner: Jerome Easterly			Name of 1st Listed Defendant/Respondent: Tony Trierweiler		
Inmate Number: 366413			Additional Information:		
Plaintiff/Petitioner's Attorney and Address Information:					
Correctional Facility: Bellamy Creek Correctional Facility 1727 West Bluewater Highway Ionia, MI 48846 IONIA COUNTY					

BASIS OF JURISDICTION

- ☐ 2 U.S. Government Defendant
☒ 3 Federal Question

ORIGIN

- ☒ 1 Original Proceeding
☐ 5 Transferred from Another District Court
☐ Other:

NATURE OF SUIT

- ☒ 530 Habeas Corpus
☐ 540 Mandamus
☐ 550 Civil Rights
☐ 555 Prison Conditions

FEE STATUS

- ☐ IFP *In Forma Pauperis*
☒ PD Paid

PURSUANT TO LOCAL RULE 83.11**1. Is this a case that has been previously dismissed?**

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____

Case No: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____

Case No: _____

Judge: _____